

REMARKS

SUMMARY OF THE OFFICE ACTION

In the Office Action, Claims 1, 2, 4-12 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over David et al. (U.S. Patent No. 6,792,125) in view of Schroeder et al. (U.S. Patent No. 4,122,315) in view of Gefvert (U.S. Patent No. 4,502,149) and further in view of Kashiwabara (U.S. Patent No. 4,552,242). Claim 3 was rejected under 35 U.S.C. § 103(a) as being unpatentable over David in view of Schroeder in view of Gefvert in view of Kashiwabara and further in view of Pfister (U.S. Patent No. 6,612,262).

With respect to Applicant's arguments submitted April 24, 2006, the Examiner indicated that Applicant's arguments with respect to Claims 1-12 and 14 have been considered but are moot in view of the new grounds of rejection.

APPLICANT'S RESPONSE

Claims 1-12 and 14

In the Office Action, Claim 1 was rejected under 35 U.S.C. § 103 as being unpatentable over David et al., in view of Schroeder et al., in view of Gefvert and further in view of Kashiwabara.

Applicant's invention includes a midrange/tweeter module, supported by a yoke, that permits translation about the speaker axis. Claim 1 recites "a midrange/tweeter module, comprising a midrange speaker and a separate tweeter speaker, the module being centered on the speaker axis in compressive engagement with the compression module; and a yoke, secured to the speaker frame, having an annular support member for receiving and maintaining the midrange/tweeter module, while permitting translation of the midrange/tweeter module about the speaker axis."

Applicant's invention provides for a three speaker arrangement centered on a speaker axis. The midrange and tweeter speakers are co-located on a module and the module may translate about the speaker axis for aiming the midrange and tweeter speakers in a particular direction.

The ability of the module to translate about the speaker axis is highly desirable for wall or ceiling mounted speakers. Wall or ceiling mounted speakers are frequently constrained as to location, dependent upon construction of the area in which the speaker is to be mounted. Therefore, the wall mounted speaker may be installed in a location that is not optimal for directing the speakers. Thus, the ability to translate or pivot the midrange/tweeter module to aim in a particular direction addresses this problem. This is especially true for midrange and tweeter speakers because they are responsive to higher frequencies, and are therefore more directional.

The primary reference identified by the Examiner is the David reference. The David reference discloses a coaxial two speaker arrangement, with a fixed midrange speaker and a translatable, coaxial tweeter speaker. The reference does not disclose or suggest a three speaker system, with translatable tweeter/midrange speakers.

The Schroeder reference also makes note of prior art coaxial, two speaker construction. (Column 1, lines 33-44). However, the David reference notes that the use of a low frequency speaker to reproduce midrange frequencies results in Doppler distortion and the lack of suitable midrange clarity. (Column 1, lines 39-44). To address the inadequacy of such two speaker systems, the Schroeder discloses a three speaker system. However, these speakers are not arrayed coaxially, but rather parallel, i.e. the axis of each speaker is parallel. Moreover, the midrange and tweeter speakers are shown as fixed to the speaker frame, precluding translation of both the midrange and tweeter speakers.

Applicant submits that the Schroeder reference exemplifies how the art, with full appreciation of coaxial two speaker system, has typically migrated to non-coaxial systems in order to accommodate a practical three speaker construction.

The Gefvert reference also discloses a three speaker construction, wherein midrange and tweeter speakers are mounted on a common support member. However, like the construction disclosed in the Schroeder reference, the three speakers are arrayed on parallel axes, not coaxially oriented. Moreover, once installed, the tweeter/midrange unit does not appear to be translatable relative to the bass speaker.

The Kashiwabara reference is the only cited reference which discloses a three speaker coaxial system. However, each of the three speakers appear to be in a fixed position relative to the other, i.e. non-translatable. Moreover, construction disclosed in the Kashiwabara reference appears to be relatively complex, and evidences the practical difficulty to provide a coaxial, three speaker system, even where speakers are in fixed relative orientations. As such, it is not surprising that, in the approximately 20 years that have passed since the issuance of the Kashiwabara patent, the prior art does not appear to have proposed a coaxial, three speaker system with a translatable midrange or tweeter speaker, no less a translatable midrange/tweeter module.

Even accepting that there is a motivation to provide directivity in relation to a coaxial, three speaker system, it appears to be a fair assessment that such motivation would be in the nature of motivation to try, without any basis to conclude how such efforts might be implemented. As the Examiner is aware, "obvious to try" is not sufficient motivation to support a rejection under 35 U.S.C. §103. E.g. *In re Fine*, 5 USPQ 2d. 1309 (Fed. Cir. 1996); *Gillette Co. v. S.C. Johnson & Sons, Inc.*, 16 USPQ 2d. 1923 (Fed. Cir. 1990).

Applicant recognizes that 35 U.S.C. §103 does not require that the prior art disclose an operative embodiment of a claimed invention, only provide incentive to implement a construction that would be within the scope of ordinary skill in the art. However, there is no basis in the record to conclude that the implementation of a coaxial, three speaker system with translatable speakers would be an obvious expedient from the state of the art. Given the complexity of the only coaxial, three speaker system disclosed (Kashiwabara), and the evidence that, despite explicit recognition of the limitation of coaxial two speaker systems the art has migrated to non-coaxial, three speaker systems as a way of accommodating the third speaker (as disclosed in the Schroeder reference), any suggestion that a translatable, coaxial, three speaker system would be an obvious modification of the art, is not supported.

Applicant submits that any "motivation to try" to devise a coaxial, three speaker system having translatable speakers is more in the nature of a recognition of the commercial utility and need for such a system, which has been long felt in the art for

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many years, given the disclosure of untranslatable and/or non-coaxial speaker systems over time. Applicant submits that such evidence of long felt need should not be transmuted to a "motivation to modify" without any record basis to suggest how such a construction might be implemented. The only explicit suggestion or disclosure of such a construction appears to come from the subject application. As such, Applicant submits that the asserted combination of references and asserted motivation to modify that combination amounts to little more than a hindsight reconstruction of the art, to render obvious a claimed construction that has long been useful to, yet unheard of in the prior art. *In re Fine*, 5 USPQ 2d. 1596 (Fed. Cir. 1988); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 220 USPQ 303 (Fed. Cir. 1983).

Accordingly, Applicant requests reconsideration of the rejection of the claims under 35 U.S.C. §103.

CONCLUSION

For the foregoing reasons, Applicant respectfully submits that the claims as amended are now in condition for allowance. An early notice to such effect is therefore respectfully requested. Should any outstanding matters remain, or should the Examiner should have any suggestions for expediting allowance of the application, the Examiner is invited to contact Applicant's representative at the telephone number listed below.

If any additional fee is required, please charge Deposit Account #19-4330.

Respectfully submitted,

Date: Nov 29, 2006 By: Bruce B. Brunda

Customer No.: 007663

Bruce B. Brunda
Registration No. 28,497
STETINA BRUNDA GARRED &
BRUCKER
75 Enterprise, Suite 250
Aliso Viejo, California 92656
Telephone: (949) 855-1246